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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/627,265

07/26/2003

Neal B. Gittleman



7599

7590

05/04/2006

Ezra L. Schacht  
1620 West Main St.  
Houston, TX 77006-4712

EXAMINER

STOKES, CANDICE CAPRI

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/627,265

Applicant(s)

GITTLEMAN, NEAL B.

Examiner

Candice C. Stokes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenberg (USPN 5,599,185). Greenberg discloses a dental implant 60 with a threaded shaft as shown in Fig. 5, and a prolate spheroidal head having a circumferential groove. Further, Greenberg discloses flats 91 in the surface and a shaped recess 94 in the distal end of the head for driving or holding a wrench. As to Claim 16, implant 60 also comprising offset detachable abutment 80.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1) Claims 1-4,6-7,9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daftary et al (USPN 5,145,372) in view of Gittleman (USPN 5,967,781). Daftary et al disclose a minipin dental implant apparatus 306 to secure a prosthesis comprising a threaded shaft 314 with a flared transition 310 with an upper circular face as shown in Fig. 10. The upper

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circular face of the head having a central threaded blind hole 312. Daftary et al further discloses a detachable abutment 308 having a circular face 320 having a projecting abutment threaded shaft 322. The abutment threaded shaft 322 mates with the threaded blind hole 312 in the hemispherical head in the implant 306. As to Claim 3, “the improved abutment 304 comprises a frusto-conical shaped head segment 330 with a threaded stem 322 which permits removable engagement with the implant 306 of the improved healing cap 302 through the threaded blind hole 312 of the divergent segment 310 of the implant 306 of the improved healing cap 302 which remains in the patient” (col. 11, lines 12-18). Regarding Claims 6 and 7, Fig. 18 shows the detachable hemispherical abutment having an elongated cylindrical extension region 420 and Fig. 19 shows the detachable conic abutment having an elongated cylindrical extension region. Further, to Claim 11, detachable abutment 308 has a drive recess shown in Fig. 10 near reference numeral 324. Finally to Claim 12, the circumferential groove is considered to be threaded blind hole 312 and a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Daftary et al do not teach or reasonably disclose a flared transition to a hemispherical head as stated in claim 1, however Gittleman teaches an implant having a shaft with a flared transition to a hemispherical head 26 having an upper circular face 28. It would have been an obvious matter of design choice to make the head hemispherical instead of conical, since such a modification would have involved a mere change in shape of a component. A change in shape is generally recognized as being within the level of ordinary skill

in the art. Further, Gittleman teaches a hemispherical shaped head is constructed in a manner “to obtain a proper fit of the head in the patient’s gum” (col.5, lines 39-40).

As to Claims 4 and 9, Daftary et al disclose the claimed invention except for the head of the implant having a number of detents and the conic abutment having a hydrostatic relief groove. Gittleman teaches an implant comprising detents 32,34 and an abutment having a hydrostatic relief groove 22 as best shown in Figs. 3 and 4. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the detents and relief groove as taught by Gittleman into the implant disclosed by Daftary et al in order to provide an implant capable of being adapted for use in nearly every circumstance likely to be encountered by the restoring dentist or lab technician.

2) Claims 5 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daftary et al in view of Niznick (USPN 6,287,117). Daftary discloses the claimed invention except for the implant having a self starting thread on the threaded shaft and having flats on the surface of the head for driving and holding a wrench. Niznick teaches “fig. 1 shows endosseous implant 10 with an externally-threaded body portion 16, apical hole 17, transverse through-hole 18, and self-tapping cutting threads 19” (col. 4, lines 21-23). Further, Fig. 6A shows flats 301 on the surface of the implant for driving and holding a wrench. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the thread and flats as taught by Niznick into the invention disclosed by Daftary et al in order to provide easier insertion by the dentist or technician.

3) Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daftary et al in view of Klardie et al (USPN 5,782,918). Daftary et al disclose the claimed invention

except for the abutment having an o-ring retention groove and a hydrostatic relief groove. In Figs. 1 and 2, Klardie et al teach an implant abutment system wherein the abutment comprises several o-ring retention grooves and an hydrostatic relief groove. It would have been obvious to one having ordinary skill in the art at the time of the invention in order to provide an implant capable of being adapted for use in nearly every circumstance likely to be encountered by the restoring dentist or lab technician.

4) Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daftary et al in view of Daftary (USPN 5,362,235). Daftary et al disclose the claimed invention except for the implant comprising an offset detachable abutment. Daftary teaches an implant with an offset detachable abutment as shown in Fig. 23. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the offset detachable abutment as taught by Daftary into the invention disclosed by Daftary et al in order for increased versatility of the use of the implant, specifically in a misaligned situation.

### ***Response to Arguments***

Applicant's arguments filed 01/31/06 have been fully considered but they are not persuasive. As stated in the Amendment, "it is the view of the applicant that the prior art should teach in sufficient detail a method and apparatus that will accomplish the function stated in the present application" (see page 4, lines 1-2). Unfortunately, the Office may not rely on Applicant's view for patentability. It is clear that any reference used to reject the claims must meet the limitations of the claims. In the instant application, such is the case. The Greenberg and the Daftary and Gittleman reference teach the claimed invention. Because Greenberg's

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intentions may or may not have been the same at the time of the invention is irrelevant. The limitations of the claims are met by the reference and therefore, the invention of the instant application is not patentable. Thus claims, 1-16 remain rejected.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

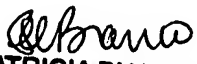
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Candice C. Stokes

  
**PATRICIA BIANCO**  
**PRIMARY EXAMINER**  
5/1/06